



Town of Brewster

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Office of:
Select Board
Town Administrator

October 18, 2022

Rights-of-Way Program
Massachusetts Department of Agricultural Resources (MDAR)
251 Turnpike Road
Southborough, MA 01772

To Whom it May Concern:

The Select Board for the Town of Brewster is writing to express grave concerns regarding the recently released draft of the Eversource 2023-2027 Vegetation Management Plan for Cape Cod (VMP). This draft is essentially unchanged from the previous plan, in particular, Eversource Energy again proposes to utilize herbicides to treat their Rights-of-Way (ROW's) in Brewster. While we support the goal of maintaining safe and uninterrupted electrical service, we believe that this VMP is fundamentally flawed and as such cannot adequately serve as a guiding document for Yearly Operational Plans (YOP's) over the next five years.

Our concerns fall into four specific categories:

1. **Opt Out Mechanism:** The VMP lacks a mechanism for municipalities to opt out of annual herbicide spraying on the rights of ways. With the number and diversity of sensitive areas along the ROW's in Brewster, the VMP must present alternative means to minimize and eliminate herbicide use. By contrast, Massachusetts municipalities are allowed to opt out of mosquito spraying conducted by the State Reclamation and Mosquito Control Board by providing an alternative mosquito management plan. It is not without precedent, therefore, for MDAR to offer an opt out process for pesticide or herbicide spraying.
2. **Sensitive Area Definition, Identification, and Mapping:** The VMP lacks an unambiguous chain of responsibility for identification and mapping of sensitive areas. If these areas are not adequately documented, Eversource cannot prevent impacts due to herbicide spraying on public health, agricultural interests, and the environment which is their duty under Massachusetts law.

An example of perhaps the most striking and potentially harmful flaws in the VMP is the process for identification of at-risk private wells. The VMP states "Maps are a resource and a tool for both the public and the vegetation management crews, therefore, they contain the data needed to identify, mark, and treat sensitive areas appropriately. Maps included in the YOP are updated every year as new data becomes available." This statement is apparently not put into operation with regard to private drinking water wells. Below is an excerpt from a recent email exchange with the Eversource Lead GIS Technician for Cape Cod:

Query from the Town of Brewster to Eversource:

"I am writing with a question about how you determine where private wells are located on your YOP maps. I work with the Natural Resources Department in the town of Brewster. We got a question from a resident asking whether the YOP map is updated every year to reflect new private wells. I assume they are, of course, but I couldn't find exactly what database or map layer you would be using to do that. Not sure whether this is in your area or not but any help I could get to reassure the resident would be much appreciated."

Response from Eversource Lead GIS Technician, Yarmouth:

"We do not track private wells on our maps. We contact digsafes for information about underground utilities we need to know about."

Private drinking water wells are among the most difficult sensitive areas to protect because public records are not readily available. The VMP contains inadequate protocols for notification of abutters as to their role in the treatment process, for example, abutting landowners need to know that Eversource contractors are expecting them to post signs on the edge of the ROW to identify private water supplies, including the perpendicular distance of the well from the ROW.

The Town of Brewster does not have confidence that the VMP protocol is adequate to protect its residents and believes that some private well users may be at risk.

3. **Clean Water Act Compliance?:** In a non-delegated state like Massachusetts, permitting of discharges under the Clean Water Act (CWA) falls to the EPA. EPA issued a National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP) for point-source discharges from the application of pesticides to waters of the United States in 2011, which was updated in 2021. Biological and chemical pesticides are pollutants as defined under the CWA and as such are subject to regulations applicable to pollutants. Courts have previously determined that applications of pesticides are point sources. As a result of the Sixth Circuit's decision, point source discharges to waters of the United States from the application of pesticides require NPDES permits.

It is important to note that coverage under EPA's Pesticide General Permit (PGP) is not available for discharges to impaired waters, for example, the Pleasant Bay Watershed. Specifically, discharges of pesticides are not authorized for coverage under the PGP to waters which are impaired for the active ingredient of the pesticide or waters which are impaired for degradates of that active ingredient. Several of the herbicides listed in the Rights of Way Sensitive Area Materials List have nitrogenous breakdown products. Since the Pleasant Bay Watershed Permit has a TMDL for total nitrogen, application of pesticides / herbicides to any ROW's within the watershed is not covered by the PGP.

The Town of Brewster is unclear as to the authority of MDAR to authorize Eversource to apply nitrogen-containing pesticides/herbicides near the Pleasant Bay Watershed or any other impaired waters of the United States.

4. **Right of Way Advisory Panel on the Public Record:** The ultimate recommendations on any adjustments to the VMP are made by the Right of Way Advisory Panel which has no requirement to conduct public meetings. Thus, support for the final decision on acceptance of the VMP occurs behind "closed doors." The Town of Brewster believes that all aspects of the VMP approval should be public.

We ask that MDAR re-evaluate this VMP and remedy its flaws. In the meantime, we ask that no chemical herbicide spraying be conducted in the Town of Brewster.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "David Whitney". The ink is black and the signature is fluid and elegant.

David Whitney
Chair of the Select Board

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(dwhitney@brewster-ma.gov) from emawn@brewster-ma.gov
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Viewed by Dave Whitney (dwhitney@brewster-ma.gov)
IP: 73.47.1.50



SIGNED

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Signed by Dave Whitney (dwhitney@brewster-ma.gov)
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The document has been completed.